



Federal Communications Commission
Washington, D.C. 20554

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DA 21-1

SMALL ENTITY COMPLIANCE GUIDE

**Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility
Modification Requests Under Section 6409(a) of the Spectrum Act of 2012**

**FCC 20-153
WT Docket No. 19-250
Released November 3, 2020**

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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I. OBJECTIVES OF THE PROCEEDING

In the *Report and Order* in WT Docket No. 19-250, the Commission revised its rules to further streamline the state and local government review process for modifications to existing wireless infrastructure under section 6409(a) of the Spectrum Act of 2012.¹ By adopting this *Report and Order*, the Commission continued its efforts to reduce regulatory barriers to wireless infrastructure deployment and to encourage the use of existing infrastructure, where efficient, to accelerate deployment of 5G and other advanced networks.

Specifically, the *Report and Order* revised the Commission's rules to: (i) provide that the modification of an existing tower outside the public rights-of-way that entails ground excavation or deployment of transmission equipment of up to 30 feet in any direction outside the site (excluding any access or utility easements currently related to the site) will be eligible for streamlined processing under section 6409(a) review; and (ii) clarified that "site" refers to the boundary of the leased or owned property surrounding a tower and any access or utility easements currently related to the site as of the date that the tower or base station was last reviewed and approved by a state or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the section 6409(a) process.

II. COMPLIANCE REQUIREMENTS

The *Report and Order* made rule changes to the definitions of: (1) "substantial change" in section 1.6100(b)(7)(iv); and (2) "site" in section 1.6100(b)(6).

Substantial Change (47 CFR § 1.6100(b)(7)(iv))

- Under the amended rules, the revised definition of "substantial change" in subsection 1.6100(b)(7)(iv) permits entities submitting an eligible facilities request to include a modification of an existing tower outside the public rights-of-way that entails ground excavation or deployment of transmission equipment up to 30 feet in any direction outside the boundaries of a site. The revised definition clarifies that such a modification will be eligible for streamlined processing under section 6409(a).
- The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site.
- Other eligible support structures—*e.g.*, towers in the public rights-of-way and non-tower structures—are not affected by the rule change.

Site (47 CFR § 1.6100(b)(6))

- Under the amended rules, for applicants seeking modifications to a structure, a "site" as defined in subsection 1.6100(b)(6) is the boundary of the leased or owned property surrounding a tower and any access or utility easements currently related to the site as of the date that the original tower or base station or a modification to that structure was last reviewed and approved by a state or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the section 6409(a) process.

¹ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, title VI (Spectrum Act of 2012), § 6409(a), 126 Stat. 156 (Feb. 22, 2012) (codified as 47 U.S.C. § 1455(a)).

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The Commission's actions in the *Report and Order* did not create any new recordkeeping or reporting requirements.

IV. IMPLEMENTATION DATE

The rules in the *Report and Order* shall become effective on January 4, 2021, 30 days after publication of the text or summary thereof in the Federal Register.

V. INTERNET LINKS

A copy of the *Report and Order* is available at: <https://docs.fcc.gov/public/attachments/FCC-20-153A1.pdf>.

A copy of the Federal Register Summary of the *Report and Order* is available at: <https://www.govinfo.gov/content/pkg/FR-2020-12-03/pdf/2020-25144.pdf>.